

and it appears that a hearing may be required, the procedure set forth in § 73.3593 will be followed. No further action will be taken with reference to the other applications in the lottery group from which the tentative selectee was selected until the tentative selectee's qualifications to be a permittee are resolved. If the tentative selectee is ultimately found to be unqualified to be a permittee, the procedure set forth in paragraph (f)(2) of this section will be followed.

(4) The FCC will periodically release a Public Notice accepting for filing and proposing for grant those applications which were timely filed during the filing period specified by the FCC in a Public Notice for filing low power TV or TV translator applications, but which are not mutually exclusive with any other application, and providing an opportunity for the filing of Petitions to Deny pursuant to § 73.3584.

NOTE 1: Notwithstanding paragraph (f)(1) and § 73.3522(a)(3), applications for low power TV and TV translator stations will be processed within the tiered processing framework as set forth in *Notice on Interim Processing*, 45 FR 62004 (published September 17, 1980), *Order Imposing Freeze*, 46 FR 26062 (published May 11, 1981), and *Report and Order in the Matter of Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, 47 FR 21468 (published May 18, 1982).

NOTE 2: Pursuant to § 73.3584(c), the Commission may announce, by the Public Notice designating the applications for public lottery, that a Notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

(5) TV booster station applications may be filed at any time and will be subject to the following procedures:

(i) Subsequent to filing, the FCC will release a Public Notice accepting for filing and proposing for grant those applications which are not mutually exclusive with any other TV translator, low power TV, or TV booster application, and providing for the filing of Petitions To Deny pursuant to § 73.3584;

(ii) Any application received during the filing period for TV translator, low power TV, or TV booster applications with which it is mutually exclusive will be included in the relevant public lottery pursuant to § 1.1601 *et seq.*; and

(iii) Applications received after the filing date for applications with which it is mutually exclusive will be dismissed as an untimely filing.

[44 FR 38502, July 2, 1979, as amended at 48 FR 27205, June 13, 1983; 48 FR 34039, July 27, 1983; 49 FR 47843, Dec. 7, 1984; 52 FR 31400, Aug. 20, 1987; 55 FR 19265, May 9, 1990; 56 FR 795, Jan. 9, 1991; 56 FR 33720, July 23, 1991; 63 FR 13562, Mar. 20, 1998]

§ 73.3573 Processing FM broadcast station applications.

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.202(b)). A licensee or permittee may seek the higher or lower class adjacent channel, intermediate frequency or co-channel or the same class adjacent channel of its existing FM broadcast station authorization by filing a minor change application. Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments. Long-form applications submitted pursuant to § 73.5005 for a new FM broadcast service may propose a higher or lower class adjacent channel, intermediate frequency or co-channel. For non-commercial educational FM stations, a major change is any change in frequency or community of license or any change in power or antenna location or height above average terrain (or combination thereof) which would result in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area.) A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed.

(2) The second group consists of applications for licenses and all other changes in the facilities of authorized stations.

(b)(1) The FCC may, after the acceptance of an application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3522, 73.3580 and 1.1111 of this chapter pertaining to major changes. Such major modification applications in the non-

reserved band will be dismissed as set forth in paragraph (f)(2)(i) of this section.

(2) An amendment to a non-reserved band application which would effect a major change, as defined in paragraph (a)(1) of this section, will not be accepted, except as provided for in paragraph (f)(2)(i) of this section.

(3) A new file number will be assigned to a reserved band application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section. Where an amendment to a reserved band application would require a new file number, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for hearing, if applicable; and may be afforded, subject to the discretion of the Administrative Law Judge, an opportunity to withdraw the amendment after designation for hearing.

(c) An application for changes in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(d) If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of an application for FM broadcast facilities, the same will be granted. If the FCC is unable to make such a finding and it appears that a hearing may be required, the procedure given in § 73.3593 will be followed.

(e) Applications for reserved band and Class D FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and

announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

(f) *Processing non-reserved FM broadcast station applications.* (1) Applications for minor modifications for non-reserved FM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and, generally, will be processed in the order in which they are tendered. The FCC will periodically release a Public Notice listing those applications accepted for filing. Processing of these applications will be on a “first come/first serve” basis with the first acceptable application cutting off the filing rights of subsequent applicants. All applications received on the same day will be treated as simultaneously tendered and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Applications received after the tender of a lead application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, as against all other applicants, are determined by the date of filing, but the filing date for subsequent applicants for that channel and community only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

(2) (i) The FCC will specify by Public Notice, pursuant to § 73.5002(a), a period for filing non-reserved band FM applications for a new station or for major modifications in the facilities of an authorized station. FM applications for new facilities or for major modifications will be accepted only during the appropriate filing period or “window.” Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after

the specified deadline will be dismissed with prejudice as untimely.

(ii) Such FM applicants will be subject to the provisions of §§1.2105 and 73.5002 regarding the submission of the short-form application, FCC Form 175, and all appropriate certifications, information and exhibits contained therein. FM applicants may submit a set of preferred site coordinates as a supplement to the short-form application. Any specific site indicated by FM applicants will not be studied for technical acceptability, but will be protected from subsequently filed applications as a full-class facility as of the close of the window filing period. Determinations as to the acceptability or grantability of an applicant's proposal will not be made prior to an auction.

(iii) FM applicants will be subject to the provisions of §§1.2105 and 73.5002(c) regarding the modification and dismissal of their short-form applications.

(3) Subsequently, the FCC will release Public Notices:

(i) Identifying the short-form applications received during the window filing period which are found to be mutually exclusive;

(ii) Establishing a date, time and place for an auction;

(iii) Providing information regarding the methodology of competitive bidding to be used in the upcoming auction, bid submission and payment procedures, upfront payment procedures, upfront payment deadlines, minimum opening bid requirements and applicable reserve prices in accordance with the provisions of §73.5002;

(iv) Identifying applicants who have submitted timely upfront payments and, thus, are qualified to bid in the auction.

(4) If, after the close of the appropriate window filing period, a non-reserved FM allotment remains vacant, the window remains closed until the FCC, by Public Notice, specifies a subsequent period for filing non-reserved band FM applications for a new station or for major modifications in the facilities of an authorized station pursuant to paragraph (f)(2)(i) of this section. If, during the window filing period, the FCC receives only one application for any non-reserved FM allotment, a Public Notice will be released identifying

the non-mutually exclusive applicant, who will be required to submit the appropriate long-form application within 30 days of the Public Notice and pursuant to the provisions of §73.5005. These non-mutually exclusive applications will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§73.5006 and 73.3584 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the non-mutually exclusive long-form application, it will be granted.

(5)(i) The auction will be held pursuant to the procedures set forth in §§1.2101 *et seq.* and 73.5000 *et seq.* Subsequent to the auction, the FCC will release a Public Notice announcing the close of the auction and identifying the winning bidders. Winning bidders will be subject to the provisions of §§1.2107 and 73.5003 regarding down payments and will be required to submit the appropriate down payment within 10 business days of the Public Notice. Pursuant to §§1.2107 and 73.5005, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the public notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in §73.5005(a).

(ii) These applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§73.5006 and 73.3584 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the winning bidder's long-form application, a Public Notice will be issued announcing that the construction permit is ready to be granted.

Each winning bidder shall pay the balance of its winning bid in a lump sum within 10 business days after release of the Public Notice, as set forth in §§ 1.2109(a) and 73.5003(c). Construction permits will be granted by the Commission following the receipt of the full payment.

(iii) All long-form applications will be cut-off as of the date of filing with the FCC and will be protected from subsequently filed long-form applications and rulemaking petitions. Applications will be required to protect all previously filed commercial and non-commercial applications. Winning bidders filing long-form applications may change the technical proposals specified in their previously submitted short-form applications, but such change may not constitute a major change. If the submitted long-form application would constitute a major change from the proposal submitted in the short-form application or the allotment, the long-form application will be returned pursuant to paragraph (f)(2)(i) of this section.

NOTE 1 TO § 73.3573: Applications to modify the channel and/or class of an FM broadcast station to an adjacent channel, intermediate frequency (IF) channel, or co-channel shall not require any other amendments to the Table of Allotments. Such applications may resort to the provisions of the Commission's Rules permitting short spaced stations as set forth in § 73.215 as long as the applicant shows by separate exhibit attached to the application the existence of an allotment reference site which meets the allotment standards, the minimum spacing requirements of § 73.207 and the city grade coverage requirements of § 73.315. This exhibit must include a site map or, in the alternative, a statement that the transmitter will be located on an existing tower. Examples of unsuitable allotment reference sites include those which are offshore, in a national or state park in which tower construction is prohibited, on an airport, or otherwise in an area which would necessarily present a hazard to air navigation.

NOTE 2 TO § 73.3573: Processing of applications for new low power educational FM applications: Pending the Commission's re-study of the impact of the rule changes pertaining to the allocations of 10-watt and other low power noncommercial educational FM stations, applications for such new stations, or major changes in existing ones, will not be accepted for filing. Exceptions are: (1) In Alaska, applications for new Class D stations or major changes in existing ones are

acceptable for filing; and (2) applications for existing Class D stations to change frequency are acceptable for filing. In (2), upon the grant of such application, the station shall become a Class D (secondary) station. (See First Report and Order, Docket 20735, FCC 78-386, 43 FR 25821, and Second Report and Order, Docket 20735, FCC 78-384, 43 FR 39704.) Effective date of this FCC imposed "freeze" was June 15, 1978. Applications which specify facilities of at least 100 watts effective radiated power will be accepted for filing.

NOTE 3 TO § 73.3573: For rules on processing FM translator and booster stations, see § 74.1233 of this chapter.

[63 FR 48627, Sept. 11, 1998]

EFFECTIVE DATE NOTE: At 63 FR 48627, Sept. 11, 1998, § 73.3573 was revised, effective Nov. 10, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 73.3573 Processing FM broadcast station applications.

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (73.202 (b)). Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. Applications filed on a first come, first served basis may propose a higher or lower class adjacent, intermediate frequency or co-channel in an application for a new FM broadcast station. A licensee or permittee may seek the higher or lower class adjacent, intermediate frequency or co-channel or the same class adjacent channel of its existing FM broadcast station authorization by filing a minor change application. For noncommercial educational FM stations, a major change is any change in frequency or community of license or any change in power or antenna location or height above average terrain (or combination thereof) which would result in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area). However, the FCC may within 15 days after the acceptance of the application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 of this chapter pertaining to major changes.